

HGST minutes of AGM 17 September 2008

THE HAMPSTEAD GARDEN SUBURB TRUST LIMITED
ANNUAL GENERAL MEETING AT THE FREE CHURCH HALL NORTHWAY NW11
Wednesday 17 September 2008 at 8 pm

Present: Angus Walker (Chairman, elected Trustee)
Phillipa Aitken (appointed Trustee: Royal Town Planning Institute)
Wilfred Court (appointed Trustee: Victorian Society)
Pia Duran (elected Trustee)
Simon Hurst (appointed Trustee: Royal Institute of British Architects)
Geoffrey Marriott (elected Trustee)
Richard Wakefield (elected Trustee)

Jane Blackburn (Trust Manager)
David Davidson (Architectural Adviser)

Judith Chaney (Area Character Appraisal)
Robin Marks (Honorary Accounts Consultant)

84 Members and other residents

Apologies: Dr Mervyn Miller
Wendy Miller
Cllr John Marshall
Cllr Andrew Harper
David B Lewis
David Lewis
Darren Michaelson
Terry Brooks
Jean & Spencer Hudson
Deborah & Peter Warland
Ailsa Pain
Peter Falk

The Chairman welcomed everyone to the fortieth Annual General meeting of the Hampstead Garden Suburb Trust. He introduced himself, his fellow Trustees, the Trust Manager and the Trust's Architectural Adviser. He also introduced Professor Judith Chaney who had been co-ordinating the Area Character Appraisal, and Robin Marks who had been appointed Honorary Accounts Consultant.

The Chairman drew residents' attention to the exhibition of aspects of the work of the Trust including the Suburb Character study. This would remain available after the meeting closed.

All four of the resident Trustees had been elected last September. This was unusual because normally not more than two of them could be expected to resign. However, all four appointed Trustees remained in post and one of the newly elected resident Trustees had in fact resigned in the early summer of last year so that the change in personnel was not quite as great as might have appeared.

It should be noted that the Report and Accounts covered the period from April 2007 to April 2008. The resident Trustees therefore were reporting on a period for five months of which they were not themselves in office.

Nonetheless the change in Trustees represented no major change in policy. Over the recent past the Trust Council had been reviewing its activities and endeavouring to improve the efficiency of its operations and the effectiveness of its policies. The present Trust Council had continued on the same path and was continuing to fulfil the hopes expressed by the then Chairman, Mervyn Mandell, when he had started this process three years previously.

The principal features of the Trust's development had been

- the continued overhaul of its finances and accounting procedures
- the continued and vigorous pursuit of the Trust's rights and duties under the terms of its leases, covenants, the Scheme of Management and the legislation that governs its activities
- the continued expansion of the provision of services to the Suburb

In financial terms the year under consideration had seen a steady improvement in the Trust's finances – it could now finance its annual cash flow deficit without banking assistance and it was hoped that the Trust will eventually produce a surplus that would enable the Trust better to fulfil its charitable purposes. Trust's accounting procedures had also continued to improve.

The Trust had continued to seek to identify breaches of covenant and had had considerable success in obtaining their rectification and in deterring new infringements. There had been on occasion major infringements of regulation and disputes in this connection had given rise to considerable legal expense. The Trust was not an enthusiastic litigant but its very existence depended on the enforcement of legal provisions – it was not protected by the sanctions available to a government agency – and where necessary the Trust had, after careful deliberation, taken all the defensive steps, inside and outside the Courts, available to it.

The appointment of an Estate Manager for the Trust had made it possible to rationalise the provision and financing of gardening services and, albeit in as yet a small way, to improve the response to the dilapidation of roads, footpaths, steps owned by the Trust. In the year 2007/2008 the Estate Manager had been responsible for managing over £300,000 of expenditure.

The Suburb character study, the successful management of which owed so much to Professor Judith Chaney, was now nearing completion and, subject to agreement with the London Borough of Barnet, the study and the associated management guidance should be completed and ready for publication in 2009.

The Trust had also assisted in the administration of a grant provided by the Heritage Lottery Fund secured by Eddie Caplin for a study of the possibilities for the re-generation of Central Square. An exhibition had been held during Proms week and available on the Trust website and in the office.

There was one respect in which a change of policy should be reported to the meeting. This was with regard to the application for a change to the way in which the Management Charge was levied on those obliged to pay it. While many strongly believe that the present flat charge is unfair – imposing the same financial obligation on properties of widely differing value – there were others who believed, equally strongly, that to move to a progressive charge related to the value of properties would be unjust. The Trust Council had decided therefore that it would be wrong to take sides in a dispute.

An application by Mr Andrew Botterill for the institution of a progressive charge had been rejected on appeal by the Lands Tribunal on the grounds that the relevant legislation did not allow for a distinction to be made between charging methods on the grounds of relative fairness. Nonetheless the Trust Council understood that the Leasehold Valuation Tribunal would be prepared to entertain an application for a change on the grounds of equity under clause 11 of the Scheme of Management. If such a proposal were to receive the appropriate support the Trust would be willing to consider a further approach to the Tribunal.

The Trust Council believed that the review of our activities was beginning to have a real effect in strengthening the Trust. The Trust's time horizon was very long – this might be the fortieth annual meeting of the Trust in its present form but it was 103 years since the first Hampstead Garden Suburb Trust had been established. It was therefore early in the process of reform but in the next ten years it was expected that the changes on which the Trust was embarked would start to be more widely visible and that the Suburb would continue to reflect in its physical appearance the ambitions of its founder even more strongly than it did now.

Finally, on behalf of residents, the Chairman thanked Trustees, volunteers and staff for their efforts. The nominated Trustees came to meetings throughout the year and were a sure guarantee of the defence of the principles on which the Trust was based. He mentioned in particular the Royal Institute of British Architects' Trustee, Simon Hurst, who was Chairman of the Property and Plans Committee where matters crucial to the Suburb were first considered.

The Chairman also mentioned two volunteers who had made especial contributions to the Trust's work. It was no exaggeration to say that Professor Judith Chaney has, by hours of unstinting effort, made the Suburb character study possible. He also thanked Robin Marks for his accounting advice, bringing to the accounting of the Trust years of experience in advising charitable organisations.

The first item on the agenda was to receive and consider the Report of the Council and the Accounts for the year to 5th April 2008

The Chairman drew residents' attention to the key items of interests in the accounts.

The Scheme of Management must, of course, break even year by year, so that it was important to distinguish between the Scheme and the Trust itself.

The first salient feature was the increase in the resources available to the Trust. At the bottom of p 12 of the Report and Accounts, last line, last two figures, the funds carried forward on 5 April 2008 were nearly £640,000 as opposed to nearly £410,000 a year earlier. This had enabled the Trust to cancel a facility for £50,000 that it had with the Charity Bank. The Trust

had retained its mortgage of something over £90,000 because the interest received on this on deposit meant that it was costless. This meant that the Trust had liquid assets gross of its long term liability of over £700,000. Should deposit rates available to the Trust fall below that charged for the mortgage it would be repaid.

The second feature was the rebate to Management Charge payers. On p.12 line 6, of the figures under "Incoming Resources", the total Management Charge payable was just over £350,000. On p.23, last line, total expenditure related to the Management Charge was nearly £291,000. This had meant that £60,000 was rebated to Management Charge payers in the new Management Charge. It has also meant that the Trust had been carrying the surplus funds of the Scheme of Management for the year. This explained the entry on page 12, line 4 of the figures under "Incoming resources", of £3,500 in investment income paid to the Freehold Scheme of Management.

Total incoming resources were shown on p.12, line 9 at over £1,000,000. This apparently large increase was to be explained by the work of the estates manager in supervising work that was eventually charged to residents. This number was heavily inflated by the repair of roads, steps and paths. On p.12 line nine of the numbers, "estate management charges" were £265,077 but this amount exactly balanced the entry for "rechargeable estate maintenance" line 14 of the numbers. Without this total income would not have varied much from the previous year.

The surplus on the freehold sales, licences and variations was up sharply from £38,000 to £190,000 (p.12. line 8 of the numbers). This increase was due to a small number of unusually large payments, including the sale of piece of land in association with the sale of a freehold house, the extension of one of the very few short leases owned by the Trust, and licences for the variations of two covenants.

The restricted funds of £21,000 (p.12 line 1) consisted of a payment of £19,500 from the Heritage Lottery Fund for work on the feasibility study of North Square and a contribution from Barnet to the Suburb character study.

A campaign to reduce outstanding debtors had continued to be successful. P. 19, paragraph 14, "Debtors", line two, "other debtors", showed that outstanding Management Charges had been reduced from £95,000 to £52,000.

The general improvement in funds, net of the Scheme of Management Surplus had led to an improvement of rental/investment income (p.12 line 4 of the numbers) from £84,000 to £101,000.

The Chairman then invited questions and comments on the report of the Council for the year ending 5th April 2008.

David Iwi, Raeburn Close, said residents could only rely on the Auditors to decide whether to approve the accounts. They alone had access to the records of the Trust. One should approve accounts if the Auditors had carried out the required audit and there was no obvious error. Otherwise one should sack them and appoint fresh Auditors. Here the Auditors were required to carry out an investigation into any waste, so that they could issue the certificate required by the Scheme of Management, that what has been

expended has been expended “economically efficiently and consistently”. They had not carried out that investigation or issued that certificate. In addition it was clear to him, even without an investigation, that there had been waste. For example, the substantial legal costs which the Trust had incurred, when it originally opposed the application to vary the apportionment of the Management Charge and then withdrew the opposition before the issue was resolved, were plainly wasted. Once a proper audit establishes the amount wasted, there might be a dispute as to the responsibility on the part of the former resident Trustees and the current resident Trustees. Clearly however the non-resident Trustees, who first voted to authorise the expenditure and then voted to withdraw the opposition, were responsible for the money being wasted.

There is also clearly greater waste in the employment of staff. Already the staff has grown to 6 full-time and 3 part-time staff. At a time when there is an economic downturn any commercial company that acted in that way would not survive.

The Trust Manager said that she found Mr Iwi’s comments surprising. When Mr Papadopoulos and Mr Freeman had brought their case over the level of the Management Charge in 2005/2006 one of the issues they had raised was the matter of certification; the Scheme of Management states that the Auditors should certify that the Scheme of Management had been run “economically, efficiently and consistently” should be produced by the Auditors although this is no longer practicable. She said that Mr Iwi had been present at that hearing and was aware of the Tribunals’ judgement, in favour of the Trust, which was on the Trust’s website. Quoting from memory she said that the LVT judgement had found that the Trust was being operated well and in the interests of residents. The LVT had dealt explicitly with the matter of the certificate and had ruled that its absence was no barrier to the acceptance of the way in which the management charge had been calculated. The Trust Manager invited Mr Iwi to come in to the office to go over the judgement.

The Chairman asked if Richard Weaver from haysmacintyre, the auditors, would reply.

Richard Weaver explained that this was quite a common difficulty for many charities. The Scheme of Management had been written in 1974. Times and accounting practice have since moved on. He said that, in order to provide a certificate he would have to have a member of staff in the Trust office full-time in order to look at every transaction. He would be happy to do this but was not sure the residents would be happy with the cost – and indeed the LVT as noted by the Trust Manager, had thought that it was not in the interest of the charge payers to incur such expense. . He felt the compromise wording in the Report and Accounts should be sufficient as an assurance to residents.

Brian Schottlander, Middleway, spoke about what one can expect Auditors to do. Organisations like the Trust organisation needed to show they had done everything reasonable. Auditors today would not sign off accounts and issue a certificate. They can be asked to sign a checklist.

The Chairman pointed out that the Auditors had recently been changed and had been appointed by the Members.

Terry Rand, Falloden Way, wanted to know the total sum expended by the Trust Council in defending the regressive charge.

The Trust Manager stated that over two years it had been £18,000 which worked out at about £8 per Management Charge payer.

Terry Rand found that regrettable. Many freeholders were in favour of a progressive charge. He felt it had been a dereliction of duty to expend that money.

Denis Ross, Reynolds Close, noted that his name appeared in the Minutes of last year's meeting querying the bank loan. He noticed that this loan appears to have decreased by only £2000.

The Trust Manager said it was described as a bank loan but it was in fact a 20 year mortgage which was balanced by an investment returning the same level of interest. The Trust Council had decided to leave the loan in place for the time being.

The Chairman said that the Trust Council unanimously commends the report and accounts to the membership and asked that they be adopted.

John Freeborn, Hampstead Way, proposed the motion to receive and approve the Annual Report and Accounts for the financial year ending 5 April 2008, this was seconded by Eddie Caplin, Litchfield Way, and passed with one vote against.

Agenda item 2: Report on the election of Members of the Council

The Chairman stated that as set out in the notice of the meeting, Pia Duran had stood down to ensure that there was one place for an elected member of the Trust Council available.

Pia Duran had expressed her willingness to stand again and was nominated by Bridget Cox, David Lewis and Leonie Stephen. No other nominations had been received and therefore Pia Duran was elected unopposed.

Agenda item 3: Reappointment and remuneration of the Auditors

The motion to re-appoint haysmacintyre as the Trust's Auditors and to authorise the Trust Council to agree their remuneration was proposed by Nick Owen, Asmunds Hill, seconded by David Littaur, Wildwood Road, and passed unopposed.

Agenda Item 4: Special Business: to consider and if thought fit to pass the following resolutions, which will be proposed as special resolutions, in order to alter the Company's Articles

The Chairman moved to the items of Special Business. He explained that for these items which make changes to the Articles which govern the running of the Trust the approval of 75% of Members at the meeting was needed. The motions would be taken in the order

listed on the Notice of Meeting except that motion 4 would be taken last. He would read out each motion, followed by the explanation given in italics on the Notice of the meeting.

5 that the first sentence of Article 3 be deleted and replaced with the following sentence: 'The Subscribers to the Memorandum of Association and such other persons as are admitted to Membership in accordance with the Articles shall be Members of the Company.'

The present Article limits the number of Members of the Company to 1,250. It is proposed to remove this limit, allowing any number of residents to become Members subject to the eligibility criteria and application procedures laid down in the Articles.

The above motion was proposed by Simon Abbott, Hill Close, and seconded by Andrew Botterill, North Square, and passed unopposed.

6 that the following sentence be added to Article 30 (1) 'Such Elected Members will assume their positions at close of business of that Annual General Meeting.'

The changed wording would clarify the point at which candidates elected unopposed assume office.

Steven Licht, Wildwood Road, suggested that all the items should be taken in one go.

Peter Beesley, Rotherwick Road, said the items were listed separately so people could comment on individual items.

Simon Abbott, Hill Rise, suggested the Agenda should be followed.

The Chairman asked the meeting if all the remaining items should be taken together and this was not opposed.

7 that the following new words be added at the end of Article 32:

'but may not hold office for more than three further Annual General Meetings or six consecutive Annual General Meetings in total'

The additional wording emphasises reinforces the point that an Elected Member cannot hold office for more than 6 consecutive AGMs.

Simon Abbott said that he did not oppose the clause but considered that it should be built around a one year break. If you people became Trustees for a period and then wished to become Trustees again later they could not come back.

Pia Duran, Asmunds Hill, said she had done exactly that.

Simon Abbott said this did not seem to be written into the clause.

David Bogush, Norrice Lea, said that this was already in the existing Articles.

Jenny Stonhold, Midholm, said it might not be clear but it was what was printed on the sheet.

8 that the following new words be inserted in Article 33 after the words “at the sixth Annual General Meeting after his original election”:

‘(including any person who has resigned or otherwise ceased for a time to serve as a Member of the Council during the period expiring with such sixth meeting)’

and the new words “such sixth” be substituted in the phrase “shall not be eligible for re-election at that Annual General Meeting” in place of “that”

The existing Articles do not clearly define the period which may be served by co-opted or resigning Members of the Council. The proposed new Article would ensure that conventionally elected Members could serve for a maximum of six consecutive years, as at present, if re-elected, and that people who have resigned could serve for a maximum of six consecutive years if elected and re-elected.

9 that all words following the first sentence in Article 34 be replaced with

‘A person co-opted in this way shall (subject to Article 35) retire at the next Annual General Meeting but may stand for election at that meeting. If elected he or she shall be treated as an Elected Member elected as such from the conclusion of that meeting for the purposes of the preceding Articles and the maximum period of three and six subsequent Annual General Meetings applying to him or her pursuant to Articles 31 - 33 shall commence from the conclusion of that meeting.’

This would continue to allow for co-option to fill a vacancy among Elected Council Members while leaving the maximum period to be served by a co-opted Member to be regulated by the new Article proposed. The co-opted Member must therefore be a Member of the Trust Council for less than seven years.

Joyce Morrison, Willifield Way, asked how this would work if other people wanted to stand for Trust Council.

The Trust Manager said that there would be a vote in accordance with the procedure laid down in the existing Articles.

David Iwi, Raeburn Close, asked if the Chairman could explain how the co-opting procedure operates. He could not find anything that prevents an elected member from resigning after a six year term and then being co-opted the following day.

The Trust Manager said that was an interesting point, although the circumstances would have to be somewhat convoluted.

10 that a new Article 34(A) be incorporated in the Articles, as follows:

'34(A) Where no Elected Member of the Council or a co-opted Member is due to retire at an Annual General Meeting one Elected Member shall retire and may (subject to Articles 32 and 33) be eligible for re-election . Such Elected Member shall be the longest serving, but if there is more than one Elected Member in this category then the retiring Elected Member shall be chosen by lot or by agreement among themselves.'

This would ensure that there was at least one vacancy on the Council at each Annual General Meeting to be filled via election by Members of the Company.

11 that the following new words be inserted at the end of Article 35:

'unless re-elected without breach of the foregoing provisions'.

Article 34(A) makes it possible that an Elected Member might come up for re-election otherwise than on the third anniversary after first being elected. In that case he or she may stand provided he or she has not been in office for 6 consecutive AGMs

12 that Articles 53-57 be deleted and replaced with the following new Article 53:

'Any Member of the Council may appoint any other Member of the Council as a temporary substitute to attend and vote in his or her place at a meeting of the Council or may vote in writing under procedures to be determined by the Council on a matter to be considered at a meeting of the Council. Every appointment and removal of a temporary substitute for the purposes of this Article shall be effected by notice in writing to the Company by e mail or under the hand of the Member of the Council making or revoking such appointment.'

Existing Articles 53-57 allow a Member of the Council to appoint with full rights as a Member of the Council, possibly for several years, an 'alternate' Member of the Council who has not been elected by Members of the Company, appointed by a recognised institution or co-opted by the Council.

4 that the words 'The Companies Act 1948' in Article 1 be replaced with 'The Companies Act 2006.'

This makes more explicit the requirement for the Articles to conform with the latest version of the Act.

All the above resolutions were put to the members with the same proposer (Simon Abbott) and seconder (Andrew Botterill) as before. The resolutions were passed without opposition and by the required majority.

5 General questions were then invited by the Chairman

David Littaur, Wildwood Road, asked if it was right or wrong to think that the Trust would always be at a hopeless disadvantage when opposing wealthy developers.

The Chairman replied that it might be necessary to go to the courts to settle a matter. Crucially this does depend on the Trust's willingness to defend through the courts. It was very expensive and not easy, and involved lots of time and administrative effort. However, all Trust Council members believed that we must be determined to defend the Suburb and take legal action as necessary.

Derek Chandler, Rotherwick Road, suggested that the change in planning rules will make the Trust's role more difficult. He said that residents must support the Trust. He said there was no reason to be pessimistic.

The Chairman replied that government policy is not necessarily on the Trust's side.

David Bogush, Norrice Lea, congratulated the Trust on the decision of the LVT. He hoped the Trust will not encourage further debate. He said he was gravely concerned about the setting of a £120 Management Charge for next year. He listed that actual Management Charge for the past few years that he had calculated without the inclusion of the LVT action and the Charge for this year should be £73. He said there needed to be a huge increase in transparency: the accounts were opaque and it was not easy to read them. The Trust was standing out alone as a flagship of employment. £100,000 was being set aside for projected legal costs for the Ingram Avenue cases. He asked how the Trust Council has arrived at the sum of £110 for this year's Charge when the true cost was about £73.

The Chairman said that the Trust Council had concluded that the cost would be £110.

David Bogush said there was no basis for concluding this.

The Chairman said that this was not the opinion of the Trust Council: they have a budget and an estimate had been made for the expenditure for this year.

David Bogush asked how much had been allocated to Ingram Avenue in legal fees.

The Chairman replied £100,000.

Andrew Botterill, North Square, said that the amount given to charity was £2,600. He was not making a criticism but asked how this figure was arrived at? The reserves had gone up so was there a case for increasing this?

The Chairman said he did not yet have a complete answer to that. The terms of reference for the Grants Committee had been changed and there should be a more coherent policy in future.

Andrew Botterill spoke about the LVT. He had taken over the role of lead applicant. His co-application numbered some 550 residents who were now walking round with sad faces as opposed to the half dozen or so who were quite happy. He was not quite clear about the amount of money spent in the last 2 years on Angus Walker's motion to move to a progressive charge. He thought it was about £23,000 or £28,000 which was an atrocious

waste of money. It was not clear if it was the intention to add this to the Management Charge, was it in Trust funds, or would it be split?

The Chairman said he spoke for the resident Trustees who had said they were in favour of a progressive charge before they were elected. However as Trustees they were required to behave impartially until they understood the views of all charge payers. The costs Andrew Botterill was asking about had been embodied in the Charge. The LVT application has a history: the Trust Council was first in favour, then opposed, and then neutral. Council had every right to change its mind. The present Trust Council understands that the decision to allocate the original application was made in good faith, it was done on advice.

Andrew Botterill said it was not a question of taking sides. A cost of £28,000 for resisting the application was coming directly to Management Charge payers. He said there was a legal precedent for not allocating this to the Management Charge. He did not want to discuss this now but would raise it with the Trust office later. He felt it was not a satisfactory position: it should be with the Trust accounts and not the Scheme of Management.

The Trust Manager said that it was important to understand that the decision was made in the light of legal advice. She invited Mr Botterill to come into the office to discuss this.

Mervyn Mandell, Middleway, asked about the two pending Lands Tribunal cases. Had the Trust Council taken advice, and had it considered the consequences to the Scheme of Management if it were to lose?

The Chairman replied that the Trust Council had indeed considered these matters with great care.

Jenny Stonhold, Midholm, asked if the final version of the Area Character Appraisal would be available on the website.

Judith Chaney replied that the finished article would be an enormous document with lots of photographs. The idea was that residents would be able to download a section detailing each area of the Suburb. Residents without access to the website would be able to get a printout. The work would be important in creating a clear set of guidelines for future planning decisions.

Jenny Stonhold said that residents may not be able to affect the big developers who buy up Suburb property but they could influence the small changes by talking to people and convincing them to keep to the rules. Residents should try to encourage everyone to keep the Suburb special.

Brian Schottlander asked that a budget for the coming year should be included in the next Annual Report and Accounts.

The Chairman answered that this would be considered.

Yvonne Oliver, Asmunds Hill, was very concerned that the Trust does not control alterations to the interior of listed buildings. A listed cottage in Asmunds Hill had been altered very little but when it was bought by a developer all the interior fittings were pulled out. By the time Barnet had sent an Enforcement Officer it was too late to do anything: the cottage was wrecked.

The Trust Manager replied that the current powers of the Trust are very unusual. She could not envisage legislation to expand these powers expanded to cover interiors.

Robert Dobrik, Oakwood Road, asked if a member of Trust Staff could summarise the way the Scheme of Management could act as a buffer against the new planning regulations.

The Trust Architectural Adviser said the Trust understood there is to be a change of permitted development. The Trust's powers will not be affected. He hoped it would still be possible to use the local authority's powers in addition to those of the Trust.

The Chairman asked if there were any further questions

Alan Brudney, Temple Fortune Hill, asked if the Trust has any sanction against residents who fell indigenous trees.

The Trust Manager explained that under the Scheme of Management residents need Trust consent for any tree work, whether removing or simply pruning their trees. The Trust offers a free advisory service.

Andrew Botterill said the Chairman had been going to speak about Central Square.

The Trust Architectural Adviser said that the Heritage Lottery Fund bid for the next stage of design and implementation would go forward, probably next August. There would be plenty of time for further debate. There were no real expectations of further funds. He had been advised against putting in the application this September as there would be a focus on parks in East London connected with the Olympic sites. When the bid went forward it would be on the basis of a plan which would be available on the Trust website.

Simon Abbott said we should emphasise the importance of the inside of Suburb houses. There should be more publicity in the Gazette or Suburb News. Perhaps a competition about the preservation of interiors might assist.

The Chairman thanked everyone for attending the meeting. He invited everyone to join the Trustees in refreshments and further conversation.